

[49 FR 35954, Sept. 13, 1984; 50 FR 30194, July 24, 1985]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 17.84, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at [www.fdsys.gov](http://www.fdsys.gov).

#### § 17.85 Special rules—invertebrates.

(a) *Seventeen mollusks in the Tennessee River.* The species in the following table comprise nonessential experimental populations (NEPs):

Common name	Scientific name
Cumberland bean (pearlymussel).	<i>Villosa trabalis</i>
tubercled blossom (pearlymussel).	<i>Epioblasma torulosa torulosa</i>
turgid blossom (pearlymussel)	<i>Epioblasma turgidula</i>
yellow blossom (pearlymussel).	<i>Epioblasma florentina florentina</i>
catpaw (purple cat's paw pearlymussel).	<i>Epioblasma obliquata obliquata</i>
clubshell .....	<i>Pleurobema clava</i>
Cumberlandian combshell .....	<i>Epioblasma brevidens</i>
Alabama lampmussel .....	<i>Lampsilis virescens</i>
winged mapleleaf (mussel) ....	<i>Quadrula fragosa</i>
Cumberland monkeyface (pearlymussel).	<i>Quadrula intermedia</i>
oyster mussel .....	<i>Epioblasma capsaeformis</i>
birdwing pearlymussel .....	<i>Lemiox rimosus</i>
cracking pearlymussel .....	<i>Hemistena lata</i>
dromedary pearlymussel .....	<i>Dromus dromas</i>
fine-rayed pigtoe .....	<i>Fusconaia cuneolus</i>
shiny pigtoe .....	<i>Fusconaia cor</i>
Anthony's riversnail .....	<i>Athearnia anthonyi</i>

(1) *Where are these mollusks designated as nonessential experimental populations (NEPs)?* (i) The NEP Area for these 17 mollusks is within the species' historic ranges, and is defined as follows: The free-flowing reach of the Tennessee River from the base of Wilson Dam downstream to the backwaters of Pickwick Reservoir (river mile (RM) 259.4 [414.0 km] to RM 246.0 [393.6 km] and includes the lower 5 RM (8 km) of all tributaries to this reach in Colbert and Lauderdale Counties, Alabama.

(ii) None of the identified species are known to exist in any of the tributaries to the free-flowing reach of the Tennessee River below Wilson Dam or from below the backwaters of Pickwick Reservoir, Colbert and Lauderdale Counties, Alabama. In the future, if any of the 17 mollusks are found upstream of the lower 5 RM (8 km) of these tributaries or downstream into Pickwick Reservoir, we will presume the animals came from the reintroduced NEP, and we will amend this rule and enlarge the boundaries of the NEP Area to include the entire range of the expanded population.

(iii) We do not intend to change the NEP designations to "essential experimental," "threatened," or "endangered" within the NEP Area. Additionally, we will not designate critical habitat for these NEPs, as provided by 16 U.S.C. 1539(j)(2)(C)(ii).

(2) *What activities are not allowed in the NEP Area?* (i) Except as expressly allowed in this rule, all the prohibi-

tions of 17.31(a) and (b) apply to the mollusks identified in this special rule.

(ii) Any manner of take not described under paragraph (a)(3) of this section will not be allowed in the NEP Area. We may refer the unauthorized take of these species to the appropriate authorities for prosecution.

(iii) You may not possess, sell, deliver, carry, transport, ship, import, or export by any means whatsoever any of the identified 17 mollusks, or parts thereof, that are taken or possessed in violation of these regulations or in violation of the applicable State fish and wildlife laws or regulations or the Act.

(iv) You may not attempt to commit, solicit another to commit, or cause to be committed any offense defined in this paragraph (a).

(3) *What take is allowed in the NEP Area?* (i) Take of these species that is accidental and incidental to an otherwise lawful activity such as fishing, boating, commercial navigation, trapping, wading, or mussel harvesting, is allowed.

(ii) Any individual collecting or harvesting mussels must check their collection prior to leaving the immediate area and return any NEP mussels to the site where they were obtained.

(4) *How will the effectiveness of these reintroductions be monitored?* We will prepare periodic progress reports and fully evaluate these reintroduction efforts after 5 and 10 years to determine whether to continue or terminate the reintroduction efforts.

(b) *Sixteen mollusks in the French Broad and Holston Rivers.* The species in the following table comprise non-essential experimental populations (NEP):

Common name	Scientific name
Cumberland bean (pearlymussel).	<i>Villosa trabalis</i>
Cumberlandian combshell .....	<i>Epioblasma brevidens</i>
fanshell .....	<i>Cyprogenia stegaria</i>
Appalachian monkeyface (pearlymussel).	<i>Quadrula sparsa</i>
Cumberland monkeyface (pearlymussel).	<i>Quadrula intermedia</i>
oyster mussel .....	<i>Epioblasma capsaeformis</i>
birdwing pearlymussel .....	<i>Lemiox rimosus</i>
cracking pearlymussel .....	<i>Hemistena lata</i>
dromedary pearlymussel .....	<i>Dromus dromas</i>
fine-rayed pigtoe .....	<i>Fusconaia cuneolus</i>
rough pigtoe .....	<i>Pleurobema plenum</i>
shiny pigtoe .....	<i>Fusconaia cor</i>
orange-foot pimpleback (pearlymussel).	<i>Plethobasus cooperianus</i>

Common name	Scientific name
ring pink (mussel) .....	<i>Obovaria retusa</i>
white wartyback (pearlymussel).	<i>Plethobasus cicatricosus</i>
Anthony's riversnail .....	<i>Athearnia anthonyi</i>

(1) *Where are these mollusks designated as NEPs?* (i) The NEP area for these mollusks is within the species' historical range and is defined as follows: The French Broad River, Knox and Sevier Counties, Tennessee, from the base of Douglas Dam (river mile (RM) 32.3 (51.7 kilometers (km)) downstream to the confluence with the Holston River; then up the Holston River, Knox, Grainger, and Jefferson Counties, Tennessee, to the base of Cherokee Dam (RM 52.3 (83.7 km)); and the lower 5 RM (8 km) of all tributaries that enter these river reaches. None of the species identified in paragraph (b) are known to exist in any of the tributaries to the free-flowing reaches of the French Broad River below Douglas Dam, Knox and Sevier Counties, Tennessee, or of the Holston River below the Cherokee Dam, Knox, Grainger, and Jefferson Counties, Tennessee. Based on their habitat requirements, we do not expect these species to become established outside this NEP area. However, if any individuals are found upstream or downstream or into tributaries outside the designated NEP area, we would presume that they came from the reintroduced populations. We would then amend paragraph (b)(1)(i) of this section to enlarge the boundaries of the NEP area to include the entire range of the expanded population.

(ii) Another NEP area for 10 of these mollusks (Cumberland bean, Cumberlandian combshell, Cumberland monkeyface, oyster mussel, birdwing pearlymussel, cracking pearlymussel, dromedary pearlymussel, fine-rayed pigtoe, shiny pigtoe, and Anthony's riversnail) is provided in paragraph (a) of this section.

(iii) We do not intend to change the NEP designations to "essential experimental," "threatened," or "endangered" within the NEP area. Additionally, we will not designate critical habitat for these NEPs, as provided by 16 U.S.C. 1539(j)(2)(C)(ii).

(2) *What activities are not allowed in the NEP area?* (i) Except as expressly allowed in paragraph (b)(3) of this section, all the prohibitions of § 17.31(a) and (b) apply to the mollusks identified in paragraph (b) of this section.

(ii) Any manner of take not described under paragraph (b)(3) of this section will not be allowed in the NEP area. We may refer the unauthorized take of these species to the appropriate authorities for prosecution.

(iii) You may not possess, sell, deliver, carry, transport, ship, import, or export by any means whatsoever any of the identified mollusks, or parts thereof, that are taken or possessed in violation of paragraph (b)(2) of this section or in violation of the applicable State fish and wildlife laws or regulations or the Act.

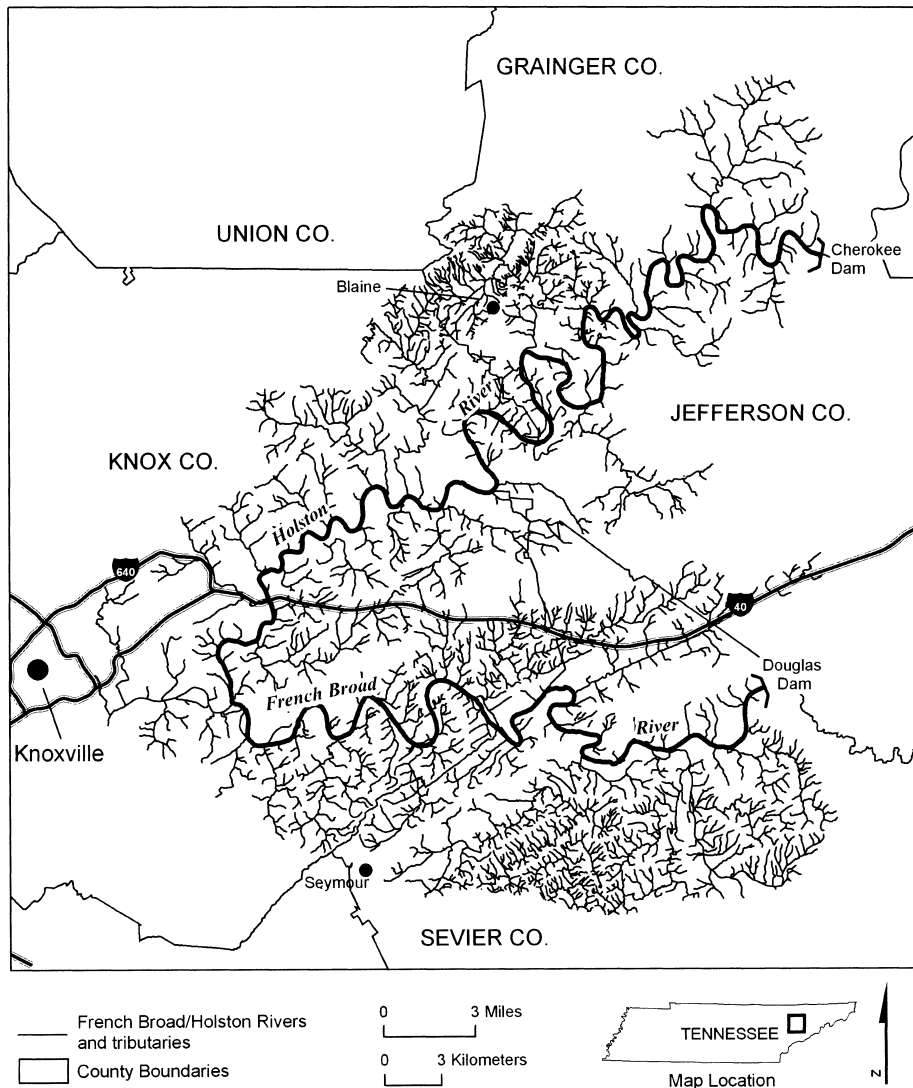
(iv) You may not attempt to commit, solicit another to commit, or cause to be committed any offense defined in paragraph (b)(2) of this section.

(3) *What take is allowed in the NEP area?* Take of these species that is accidental and incidental to an otherwise legal activity, such as recreation (e.g., fishing, boating, wading, trapping, or swimming), forestry, agriculture, and other activities that are in accordance with Federal, State, and local laws and regulations, is allowed.

(4) *How will the effectiveness of these reintroductions be monitored?* We will prepare periodic progress reports and fully evaluate these reintroduction efforts after 5 and 10 years to determine whether to continue or terminate the reintroduction efforts.

(5) *Note:* Map of the NEP area in Tennessee for the 16 mollusks listed in paragraph (b) of this section follows:

Portion of the Lower French Broad River Watershed and the Lower Holston River Watershed Covered by the 15 freshwater mussels: Appalachian Monkeyface Pearlymussel, Birdwing Pearlymussel, Cracking Pearlymussel, Cumberland Bean Pearlymussel, Cumberlandian Combshell, Cumberland Monkeyface Pearlymussel, Dromedary Pearlymussel, Fanshell, Fine-rayed Pigtoe, Orange-foot Pimpleback Pearlymussel, Oyster Mussel, Ring Pink, Rough Pigtoe, Shiny Pigtoe, and White Wartyback Pearlymussel; and 1 Federally Listed Endangered Aquatic Snail: Anthony's Riversnail Nonessential Experimental Population Designation.



(c) American Burying Beetle (*Nicrophorus americanus*).

(1) Where is the American burying beetle designated as a nonessential experimental population (NEP)? (i) The NEP

area for the American burying beetle is within the species' historical range and is defined as follows: The Missouri Counties of Cedar, St. Clair, Bates, and Vernon.

(ii) The American burying beetle is not known to exist in Cedar, St. Clair, Bates, or Vernon Counties in Missouri, as of the date of enacting this regulation. Based on its habitat requirements and movement patterns, we do not expect this species to become established outside this NEP area.

(2) *What activities are not allowed in the NEP area?* (i) You may not possess, sell, deliver, carry, transport, ship, import, or export by any means, American burying beetles, or parts thereof, that are taken or possessed in violation of paragraph (c)(3) of this section or in violation of applicable State fish and wildlife laws or regulations or the Act.

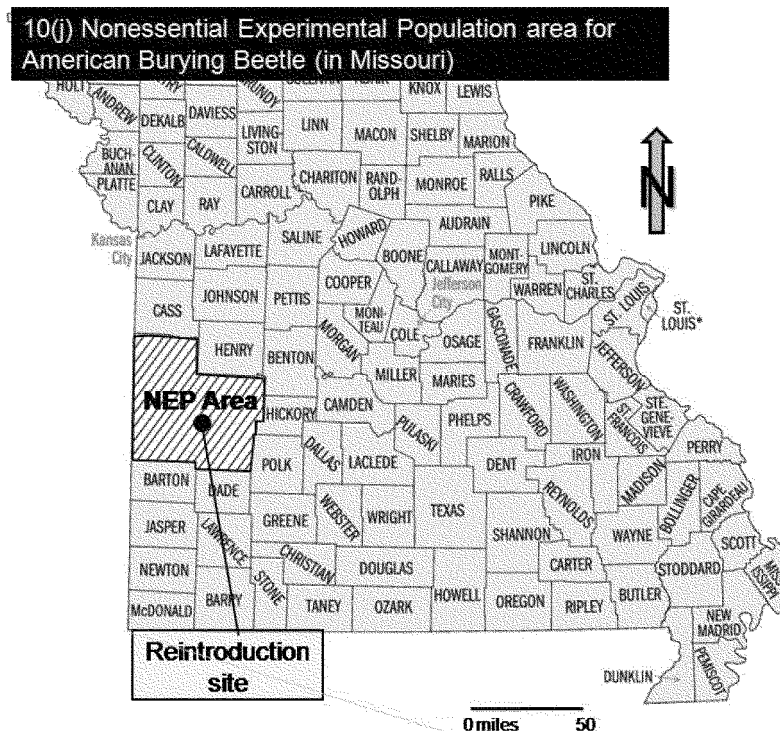
(ii) You may not attempt to commit, solicit another to commit, or cause to

be committed any offense defined in paragraph (c)(2)(i) of this section.

(3) *What take is allowed in the NEP area?* Take of this species that is accidental and incidental to an otherwise legal activity, such as agriculture, forestry and wildlife management, land development, recreation, and other activities, is allowed.

(4) *How will the effectiveness of these reintroductions be monitored?* We will prepare periodic progress reports and fully evaluate these reintroduction efforts after 5 years to determine whether to continue or terminate the reintroduction efforts.

(5) *Note:* Map of the NEP area for the American burying beetle follows:



## § 17.86

[66 FR 32263, June 14, 2001, as amended at 72 FR 52459, Sept. 13, 2007; 77 FR 16717, Mar. 22, 2012]

### § 17.86 Special rules—plants. [Reserved]

## Subpart I—Interagency Cooperation

### § 17.94 Critical habitats.

(a) The areas listed in § 17.95 (fish and wildlife) and § 17.96 (plants) and referred to in the lists at §§ 17.11 and 17.12 have been determined by the Director to be Critical Habitat. All Federal agencies must insure that any action authorized, funded, or carried out by them is not likely to result in the destruction or adverse modification of the constituent elements essential to the conservation of the listed species within these defined Critical Habitats. (See part 402 for rules concerning this prohibition; see also part 424 for rules concerning the determination of Critical Habitat).

(b)(1) For the critical habitat designations published and effective after May 31, 2012, the map provided by the Secretary of the Interior, as clarified or refined by any textual language within the rule, constitutes the definition of the boundaries of a critical habitat. Each critical habitat area will be shown on a map, with more-detailed information discussed in the preamble of the rulemaking documents published in the FEDERAL REGISTER and made available from the lead field office of the Service responsible for such designation. Each area will be referenced to the State(s), county(ies), or other local government units within which all or part of the critical habitat is located. General descriptions of the location and boundaries of each area may be provided to clarify or refine what is included within the boundaries depicted on the map, or to explain the exclusion of sites (e.g., paved roads, buildings) within the mapped area. Unless otherwise indicated within the critical habitat descriptions, the names of the State(s) and county(ies) are provided for informational purposes only and do not constitute the boundaries of the area.

## 50 CFR Ch. I (10–1–12 Edition)

(2) For critical habitat designations published and effective on or prior to May 31, 2012, the map provided by the Secretary of the Interior is for reference purposes to guide Federal Agencies and other interested parties in locating the general boundaries of the critical habitat. The map does not, unless otherwise indicated, constitute the definition of the boundaries of a critical habitat. Critical habitats are described by reference to surveyable landmarks found on standard topographic maps of the area and to the States and county(ies) within which all or part of the critical habitat is located. Unless otherwise indicated within the critical habitat description, the State and county(ies) names are provided for informational purposes only.

(c) Critical Habitat management focuses only on the biological or physical constituent elements within the defined area of Critical Habitat that are essential to the conservation of the species. Those major constituent elements that are known to require special management considerations or protection will be listed with the description of the Critical Habitat.

(d) The sequence of species within each list of Critical Habitats in §§ 17.95 and 17.96 will follow the sequences in the lists of Endangered and Threatened wildlife (§ 17.11) and plants (§ 17.12). Multiple entries for each species will be alphabetic by State.

[45 FR 13021, Feb. 27, 1980, as amended at 77 FR 25621, May 1, 2012]

### § 17.95 Critical habitat—fish and wildlife.

#### (a) Mammals.

##### INDIANA BAT (*Myotis sodalis*)

*Illinois.* The Blackball Mine, La Salle County.

*Indiana.* Big Wyandotte Cave, Crawford County; Ray's Cave, Greene County.

*Kentucky.* Bat Cave, Carter County; Coach Cave, Edmonson County.

*Missouri.* Cave 021, Crawford County; Cave 009, Franklin County; Cave 017, Franklin County; Pilot Knob Mine, Iron County; Bat Cave, Shannon County; Cave 029, Washington County (numbers assigned by Division of Ecological Services, U.S. Fish and Wildlife Service, Region 6).

*Tennessee.* White Oak Blowhole Cave, Blount county.